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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): ITL.0453US (P9661)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on March 28, 2006

Signature: [signature]

Typed or printed name: Jennifer Juarez

Application Number	Filed
09/652,168	August 31, 2000

First Named Inventor: JEFFREY L. HUCKINS

Art Unit	Examiner
2154	Dustin Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 42,117
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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3/28/06
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [x] *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Jeffrey L. Huckins	§	Group Art Unit:	2154
Serial No.:	09/652,168	§	Examiner:	Dustin Nguyen
Filed:	August 31, 2000	§		
For:	Client Messaging In Multicast Networks	§	Atty. Dkt. No.:	ITL.0453US (P9661)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant seeks pre-appeal review of the rejection of claims 45-55. It is respectfully submitted that the rejection to pending claims 45-55 are clearly erroneous and the burden of an appeal should be avoided.

Pending claims 45 and 51 stand rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,236,983 (Hofmann). This rejection is clearly erroneous as to claim 45, since Hofmann fails to disclose each and every element of the claim, in violation of well-established Patent Office policy. MPEP §2131. In this regard, Hofmann fails to teach, at least: (1) assigning of different addresses to at least two agents on a client system; (2) a client system that is of a multicast system; and (3) determining whether a message sent to multiple client systems of a multicast system and received by the client system is addressed to an agent of the system. Each of these points is discussed more fully in Applicant's Reply to Final Office Action Mailed December 28, 2005 (filed February 28, 2006), pp. 2-3.

Claim 51 is patentable over Hofmann for at least the same reasons. Furthermore, claim 51 is patentable as Hofmann nowhere teaches a processor-based device that is a client system of a multicast network. This is so, as Hofmann nowhere teaches the presence of a multicast network, which is a network that enables messages to be sent to a target group of clients

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Jennifer Juarez

constituting a subset of all network clients via a header including addresses of all subject clients that are addressed (*e.g.*, Specification, p. 1). As Hofmann nowhere teaches such a network, claim 51 is patentable for this further reason.

Pending claims 46-49 stand rejected under 35 U.S.C. §103(a) over Hofmann in view of U.S. Patent No. 6,009,274 (Fletcher). The rejection is clearly erroneous, at least for the reasons discussed above regarding claim 45 from which claim 46 depends. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (dependent claims are nonobvious when independent claim is nonobvious). The rejection of claims 46-49 is further improper, as there is no legally proper motivation to combine these two references. In this regard, the Examiner has engaged in the hindsight-based obviousness analysis that has been widely and soundly disfavored by the Federal Circuit. *E.g., In re Kotzab,* 55 U.S.P.Q.2d 1313, 1316-17 (Fed Cir. 2000).

In this regard, the Examiner merely states that it would have been obvious to combine Hofmann and Fletcher because of Fletcher's "teaching of different type of messages would allow to identify messages and to provide multiple services in a distributed environment." Final Office Action (mailed December 28, 2005), p. 5. Nowhere does this contended reasoning anywhere provide a motivation for the claimed subject matter, namely the assigning of different addresses to different agents in a client system of a multicast system, and determining whether a message sent to multiple such client systems and received by the client system is addressed to one of the agents. For this further reason, claim 46 and its dependent claims are patentable. The rejection of dependent claims 46, 48 and 49 is further erroneous, as neither reference teaches or suggests all the subject matter set forth in these claims (as required by MPEP §2143.03), as described more fully in Applicant's Reply to Final Office Action Mailed December 28, 2005 filed February 28, 2006, pp. 4-5.

The rejection of pending claims 50 and 52-55 is further erroneous (in addition to the reasons discussed above regarding claim 45), as the Examiner has engaged again in a hindsight-based rationale in order to combine Hofmann with U.S. Patent No. 5,260,778 (Kauffman). As to the reasoning for the combination, the Examiner contends that it would have been obvious to combine these references "to provide for the distribution of specific messages to individual subscribers or special groups of subscribers via a CATV communication network... ." Final Office Action, p. 6. However, this is not what is claimed in any of the rejected claims. The references must provide "the desirability of making the specific combination that was made by

the applicant." *In re Kotzab,* 55 U.S.P.Q.2d at 1316-17. Since there is no indication in the references of the desirability of these claims, the rejection is clearly erroneous.

Dependent claims 52-55 are further patentable in view of the patentability of independent claim 51, discussed above. Claim 52 is further patentable, as neither reference anywhere teaches or suggests providing of a program identifier to a tuner. In this regard, the Examiner refers to Kauffman. However, Kauffman only teaches that a cable channel is delivered to a tuner, not a program identifier. Dependent claim 53 is further patentable as neither reference anywhere teaches or suggests multiple addressable agents of a single system, as discussed above regarding claim 45. Dependent claim 54 is further patentable as neither reference anywhere teaches or suggests a service identifier. This is especially so, as the Examiner refers back to claim 49 for alleged support. However, the discussion of claim 49 is with regard to Fletcher, not Kauffman.

Since these rejections are clearly violative of existing PTO policy, the need for an appeal should be avoided.

Respectfully submitted,

Date: March 28, 2006

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